

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISCELLANEOUS CAUSE NO.193 OF 2019

(ARISING OUT OF EMA NO3204 OF 2018 & H.C.C.S NO.1 OF 2014)

DAVANTI UNION

LIMITED:.....APPLICANT

VERSUS

1. TONNY KIPOI NSUBUGA

2. FREDRICK NGANDA KAWEESA

3. MARK KAWEESA:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought under Section 149 of the Registration of Titles Act Cap 230, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, and O.52 rr.1&3 of the Civil Procedure Act SI 71-1 seeking for orders that:

1. A consequential order doth issue for compulsory partition of the suit property/house comprised in both Block 107 Plot 1016 land at Nakabago and the neighbouring plot whose description plot number is not known;

2. A consequential order doth issue for opening boundaries of the land comprised in Block 107 Plot 1016 land at Nakabago and the neighbouring plot which is adjacent to the suit land;
3. A consequential order doth issue for demolition of any structures that are within the boundaries of Block 107 Plot 1016 land at Nakabago;
4. Costs of this application be provided for.

According to the record, the brief background of the application is that: the Applicant instituted H.C.C.S No.1 of 2014 against the 1st Respondent claiming for, among others, ownership of land comprised in Kyaggwe Block 107 Plot 1016 land at Nakabago. The said suit was determined in the Applicant's favour and the following orders, among others, were made, I shall quote the decree verbatim:

1. The Plaintiff is the lawful/rightful owner of the suit land comprised in Kyaggwe Block 107 Plot 1016 land at Nakabago.
2. The Plaintiff is granted vacant possession of the suit land comprised in Kyaggwe Block 107 Plot 1016 land at Nakabago.
3. A permanent injunction is issued against the defendant and his agents restraining them from accessing the suit land comprised in Kyaggwe Block 107 Plot 1016 land at Nakabago.

Subsequently, the Applicant applied for execution of the decree to the High Court Execution and Bailiffs Division vide; EMA No.3204 of 2018; and an order of vacant possession was issued against the 1st

Respondent but Court directed that the suit land be surveyed beforehand. Upon a survey by the Applicant, he discovered that the house on the suit land was constructed on both Block 107 Plot 1016 at Nakabago and the adjacent plot with an unknown plot number. Given this revelation, the Applicant now brought this Applicant seeking the above reliefs.

The application is supported by an affidavit deponed by Joseph Kamusiime on of the directors of the Applicant Company. The application is opposed through affidavits of the 2nd and 3rd Respondents to which the Applicant rejoined.

Counsel for the respective parties filed written submissions which I shall consider accordingly.

I have carefully perused the averments in the respective parties' affidavit and appreciated the respective submissions. I proposed the issue below for resolution:

Whether the Applicant is entitled to consequential orders sought:

I will go directly to address the issue above. In **Mugerwa John Bosco & Anor versus Mss Xsabo Power Ltd H.C.M.A No.273 of 2018**, I noted that a consequential order flows naturally from the judgment that is; that it is inevitable and consequent upon the judgment. That it must not be granted if it amounts to a fresh and unclaimed or unproved relief. Further, I explained that the purpose of a consequential order is to give effect to the judgment of Court.

I have carefully looked at this Court's judgment and decree from which consequential orders. From that, I am able to believe that that judgment is conclusive and already effective. As such, there is no need for a consequential order from this Court as far as its judgment is concerned. I shall labour to explain herein below what I mean by being conclusive and effective.

In my view, a judgment is conclusive if it determines the primary rights of the parties to the suit in respect of the subject matter. For instance, if the dispute is as regards title to land (ownership of land), the judgment must determine who the rightful owner of the suit land is. On the other hand, a judgment is effective if it grants to the parties the reliefs (I will call this secondary rights) that naturally flow from the determination of the primary rights.

A secondary right/relief can be said to result naturally from the determination of the primary rights if one would automatically be entitled to the same under the law. For instance, if upon determining that the defendant obtained the Plaintiff's suit land by fraud, the judgment must go ahead and grant the relief of cancellation of his or her title.

If the judgment determines primary rights without determining secondary rights/reliefs that result therefrom; it is right to say that it is conclusive but not effective. In that situation then, a consequential order is justified to render it effective.

Consequential orders have been commonly sought in respect of judgments of lower Courts concerning recovery of registered land whilst not granting orders for cancellation of title owing to lack of jurisdiction. For instance, in *Kampama versus Registrar of Titles H.C.M.C No. 12 of 2013*, the Applicant sued a one Ibulaimu Kabanda Kironde vide Civil Case No.09 of 2012 in the Chief Magistrates Court of Mpigi for fraudulently transferring his land comprised in Busiro Block 486 Plot 9 into his name.

The suit was determined in the Applicant's favour but the trial Court could not grant an order of cancellation of title due to lack of jurisdiction over the same. Subsequently, the Applicant applied to the High Court which has jurisdiction in respect of that order and a consequential order was granted to give effect to the lower Court's judgment. See also; *Andrea Lwanga versus Registrar of Titles [1980] HCB 24; Re Ivan Mutaka [1981] HCB 28* for similar facts.

In the case before me, the Applicant was adjudged to be entitled to the suit land (primary right) and granted reliefs that is; vacant possession and permanent injunction (*secondary rights/reliefs*). Consequently, this *Court's judgment in H.C.C.S No.1 of 2014* was rendered conclusive and effective.

That said, it was then upon the Applicant to take steps to realise the fruits of that judgment and this could be done by execution of the decree. In pursuit of those fruits, the Applicant applied to High Court Bailiffs and Execution Division and a warrant of vacant

possession was granted. Given the circumstances of the case, the Applicant found it proper to obtain the orders sought herein before executing the warrant. This does not make these orders independent from the order of vacant possession granted by this Court.

In my view, the orders sought are ancillary to the order of vacant possession; although it can also be said that they are means of realising it. Let me explain! If in a judgment Court grants an order of vacant possession as the end consequence, that end can practically speaking be obtained in this case; by way of compulsory partition of the suit property and the neighbouring plot, and demolition of existing structures on the suit land, among others. Obviously, the demolition of structures, among others, would be the means of bringing about the end consequence of the judgment, vacant possession of the suit land! To me, the end consequence and the means are one and the same since they are all intended for one thing: give effect to the Court's judgment.

It is crucial, however, to mention that the means are a feature of an execution process. This can be illustrated by ***Kato Lutaaya Joseph & Anor versus Lawrence Semwanga & Others Miscellaneous Application No.761 of 2016***. In that case, the Applicants were adjudged the lawful owners of the suit land and granted an order of vacant possession. They applied to the Execution and Bailiffs Division and a warrant of vacant possession of the suit land was

granted. This was executed on the 07th day of April, 2015 and Applicants took possession of the suit land.

However, some of the Respondents had re-entered the suit land and reoccupied some of the structures thereon, yet the Applicants were desirous of utilizing the same. Subsequently, the Applicants applied to the High Court Bailiffs and Execution Division for an order of demolition to be issued as a consequential order against the Respondents, their agents, servants, or any other person deriving authority from them. The application is accordingly allowed.

Why then didn't he opt to invoke the jurisdiction of the execution Court? As Counsel for the Respondents pointed out, the right Court to entertain this application would have been the High Court Execution and Bailiffs Division. This view was properly supported by Section 34(1) of the Civil Procedure Act Cap 71 which I shall quote for consideration:

...34. Questions to be determined by the Court executing the decree.

...(1) "All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

The import of the above provision has been emphasised by this Court in *Grace Nakiyemba Nakate versus Ssemugenyi Godfrey & Others H.C.C.S No.397 of 2016; and Sinba (K) Ltd & Others versus UBC S.C.C.A No.3 of 2014*, all cited by Counsel for the Respondents.

In the case before me, it is clear that the Applicant is squarely outside the above provision. In the first place, his application appears as a fresh suit especially since it is brought as a cause, and also brings on board new parties that is; the 2nd and 3rd Respondents. It would be illogical cannot assume that this is a miscellaneous application, as it appears in the title; and that as such, the 2nd and 3rd Respondents are on board as the 1st Respondent's representatives, since the Applicant regards them as the 1st Respondents' agents in his affidavit. The reason is that status again can only be determined by the Execution Court. *See* Section 34(4) of the Civil Procedure Act Cap 71.

In view of the above, I am in agreement with Counsel for the Respondents that the Applicant is using this Court as an execution Court. Having noted that this is contrary to the law and logic, I have no option but to strike out the application.

Ultimately, the application is dismissed with costs to the 2nd and 3rd Respondents.

I so order.

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Henry I. Kawesa

JUDGE

12/03/2020

12/03/2020:

Ita Kasaija for the Applicant

Mr. Nsubuga Ronald for the Defendants.

Parties absent.

Grace; Clerk.

Counsel:

Matter for Ruling.

Court:

Ruling delivered in chambers in the presence of the above.

Sgd:

Atukwasa Justine

ASST. REG

12/03/2020

